

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Case No. 97-17145

Darlene A. Simmers,

Chapter 7

Debtor.

Appearances:

Robert H. Cohen
Attorney for the Debtor
P.O. Box 208
Schoharie, New York 12157

Philip J. Danaher
Chapter 7 Trustee
77 Troy Road
East Greenbush, New York 12061

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court is a motion by Darlene Simmers (“Debtor”) seeking an order compelling the Chapter 7 Trustee (“Trustee”) to abandon his interest in the Debtor’s residence. The Debtor relies upon 11 U.S.C. § 554; the Trustee opposes. The court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (M) and 1334(b).

Facts

The relevant facts are uncontested and based upon the pleadings and the docket the court finds the following:

On November 6, 1997, the Debtor filed a voluntary Chapter 13 petition. On Schedule “A” she listed a value of her home as \$112,000. There was no objection to this value and the Debtor’s plan was confirmed on or about April 23, 1998. The Debtor remained in Chapter 13

until June 15, 2000 when the case was voluntarily converted to Chapter 7.

On July 6, 2000, the Trustee was appointed and the meeting of creditors was conducted on August 17, 2000. Shortly after the meeting of creditors, the Trustee asked a realtor to value the property. The Trustee was advised that a quick sale of the property could result in a price between \$135,000 and \$139,000.

During the pendency of the Chapter 13 case the Debtor continued to make mortgage payments. However, on or about October 6, 2000, the mortgage holder filed a lift stay motion, alleging a default in the mortgage payments. The Debtor disputed the allegations. The Trustee also opposed the motion, asserting that equity existed for the benefit of the estate. A conditional lift stay order was entered which reserved the rights of the Trustee and the Debtor to address the home's value and companion issues. The Trustee has refrained from marketing the property to allow the Debtor to make the current motion and for the parties to file written submissions.

Argument

The Debtor argues that by a simple mathematical formula she can demonstrate that the property has no value to the estate. She begins her analysis with the value of the property as listed in her Chapter 13 petition, \$112,000. She then subtracts the mortgage, statutory liens, homestead exemption and attendant costs resulting, she contends, in no equity in the property.

The Trustee disagrees with this calculation. He begins with the current market value of the property, between \$135,000 - \$140,000, and argues when this amount is reduced by the mortgage, the statutory liens and the homestead exemption, there remains substantial equity for the estate.

Discussion

While brought before the court as a motion to compel abandonment,¹ the central issue in this dispute implicates the appreciation of real property and the question of who should receive the benefit. 11 U.S.C. § 348 details the effect of a conversion from one chapter to another and subsection (f)(1)(B) states,

Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title –

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan.

The Trustee contends that he is not bound to the \$112,000 value listed in Schedule A of the Chapter 13 petition because no valuation hearing was conducted at that time. However, the Trustee has not offered any evidence that the property's value at the time of the Chapter 13 filing was not \$112,000² and in the absence of such evidence the value of the property as indicated controls. *In re Wegner*, 243 B.R. 731 (Bankr. D. Neb. 2000) (In a conversion from Chapter 13 to Chapter 7 the home is valued at the time of the filing of the Chapter 13 and it is appropriate to ascertain values from the debtor's schedules and statements); *See, In re Alexander*, 239 B.R. 911 (B.A.P 8th 1999). Therefore, \$112,000 is the proper number to begin the analysis.

¹11 U.S.C. § 554(b) provides a mechanism whereby a party can request abandonment of property that is of no value or benefit to the estate. This section states,

On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is of inconsequential value and benefit to the estate.

²The Debtor contends that her valuation was based upon an appraisal, incidental to refinancing, conducted on April 18, 1997. The Trustee does not dispute this.

Next, the Trustee argues that even if the Debtor's number of \$112,000 is correct there remains a benefit of approximately \$16,000 for this estate.³ The court has reviewed both the Trustee's and Debtor's calculations and concludes that neither is correct. Rather, based upon the previous findings the court determines that proper calculation is as follows: \$112,000 (the amount indicated in the Chapter 13 petition) minus \$85,966 (the amount listed as debts against the property at the time of Chapter 13 filing) minus \$10,000 (homestead exemption) minus \$1,374.60⁴ (amount paid to unsecured creditors during the Chapter 13 proceeding as indicated in her Final Report and Account) for a total amount of equity of \$14,659.40.⁵

Conclusion

Since there is equity in the property the Debtor's motion to compel abandonment is denied.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge

³The Debtor's calculation differs. It appears she is attempting to include liabilities that have occurred during the pendency of Chapter 13 proceeding. The court is not convinced that including the post-filing liabilities is proper and the Debtor does not offer any legal support for that proposition.

⁴This amount is subtracted to account for the equity the Debtor "bought back" during the Chapter 13 proceeding. *See* 11 U.S.C. § 1325(a)(4).

⁵The Debtor would also have the court subtract \$11,200, a 10% liquidation factor. However, she offers no case law or statutory analysis to support that either a liquidation discount is appropriate or that 10% is the correct amount. Without such an analysis the court will not utilize the discount.

